

REMARKS

Reconsideration of this application as amended is respectfully requested. Claim 1 has been amended, claim 23 has been newly added and claims 18-22 were previously cancelled. Therefore, claims 1-17 and 23 are in this application and are again presented for the Examiner's consideration in view of the foregoing amendments and the comments which follow.

In the Official Action, claims 1-4 and 6 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,976,607 to Higgins et al. ("*Higgins I*") in view of U.S. Patent No. 5,891,494 to Badertscher ("*Badertscher*"), and further in view of U.S. Patent No. 5,242,699 to Bednar et al. ("*Bednar*"). Applicants respectfully traverse this rejection in view of the above amendments and for the reasons discussed below.

As noted previously, *Higgins I* is directed to a water-dispersable coating for use in preparing fried foods. (*Higgins I*, title and abstract.) The reference teaches a method in which potatoes are processed into potato articles having a desired size and shape, blanched, dried, dipped in a solution containing sodium acid pyrophosphate, oven dried, coated with an emulsion containing starch, oil, salt and coloring, and fried in oil. (*Higgins I*, col. 7, lns. 37-51.) As acknowledged by the Examiner, *Higgins I* does not teach the step of introducing the coated potato articles into a hot air environment.

In order to overcome the shortcomings of *Higgins I*, the Examiner has attempted to combine this reference with both *Badertscher* and *Bednar*. Applicants submit that this combination of references is improper, and that one skilled in the art would not look to the teachings of either *Badertscher* or *Bednar* to improve upon the processes and products of *Higgins I*.

Badertscher is directed to the preparation of reduced-fat potato crisps and chips without the use of an oil frying step. According to the processes of *Badertscher*, potatoes are peeled and sliced, treated with superheated steam and coated with an emulsion consisting of an oil and a starch in aqueous dispersion or solution. (*Badertscher*, col. 1, lns. 38-50.) Following the emulsion coating step, the potato articles are processed differently depending upon whether chips (*i.e.*, french fries) or crisps (*i.e.*, potato chips) are being prepared. As described in applicants' previous response dated October 21, 2009, products that are generally known as "potato chips" in the United States are referred to as "crisps" in the United Kingdom and Europe. Similarly, products generally known as "french fries" in the United States are referred to as "chips" in the United Kingdom and Europe. As *Badertscher* is from Switzerland, his patent follows the nomenclature of Europe, namely that chips and french fries are one and the same. This is confirmed by the *Badertscher* reference which describes crisps as potato slices having a thickness of 1-4 mm, and chips as potato slices having a thickness of 5-10 mm. (*Badertscher*, col. 1, lns. 56-65.) When crisps (potato chips) are being prepared, *Badertscher* teaches that the slices, after coating, are toasted at 155-180°C in an air oven or with superheated steam and then cooled. (*Badertscher*, col. 2, lns. 40-45.) However, when chips (french fries) are being prepared, the coated slices are merely cooled, packaged and frozen. (*Badertscher*, col. 2, lns. 46-50.) Thus, when chips or french fries are being prepared, *Badertscher* does not teach a drying step following emulsion coating. This is confirmed in Example 1 of *Badertscher*.

Applicants submit that there are numerous reasons why one skilled in the art attempting to improve upon the process of *Higgins I* for preparing french fries would not turn to the teachings of *Badertscher*. Firstly, *Higgins I* is directed to the

preparation of fat-fried foods, and is not at all concerned with producing a food product that is low in fat content. On the other hand, *Badertscher* is specifically directed to the preparation of potato crisps and chips having a reduced fat content. (*Badertscher*, col. 1, lns. 4-6.) In view of the totally different goals of the two processes, applicants submit that one of ordinary skill in the art would not look to the reduced fat processes of *Badertscher* in order to improve upon the fat-fried process of *Higgins I*.

Secondly, *Higgins I* is directed to prolonging the serving time of fried foods in fast food restaurants, institutional kitchens and the like. (*Higgins I*, col. 1, lns. 35-43.) That is, *Higgins I* is concerned with maintaining the texture and taste of fried foods from the time they are fried until they are ultimately served to the consumer. This is a problem unique to commercial settings where potato products may be fried a considerable length of time before they are served, and may require a holding period beneath a heat lamp. (*Higgins I*, col. 8, lns. 38-41.) In contrast, *Badertscher* appears to be directed more toward the home market where the consumer heats the product and consumes it immediately. Nowhere does *Badertscher* show any concern for maintaining the texture and taste of the prepared food products for prolonged periods of time prior to serving.

Additionally, *Higgins I* subjects the coated potato articles to a parfrying step before packaging. The potatoes are then intended to be finished fried before serving by the commercial establishment. To the contrary, *Badertscher's* coated chips (french fries) are simply cooled and packaged, and are intended to be oven baked by the consumer prior to serving. *Badertscher's* crisps (potato chips) are not intended to be cooked at all following packaging, but may be eaten directly. Applicants submit that this manifest difference in the final

cooking methodology of *Higgins I* and *Badertscher* is yet another reason why the ordinarily skilled artisan would not look to apply the teachings of *Badertscher* to the process of *Higgins I*.

Moreover, even if the teachings of *Higgins I* could somehow be combined with those of *Badertscher*, applicants submit that such combination would still not teach the subject matter of the present invention. In that regard, applicants direct the Examiner's attention to the requirement in claim 1 for:

"processing potatoes into potato articles in the form of french fries having a desired size and shape."

Support for this limitation can be found in the present application at page 1, lines 29-30.

Applicants would also note the requirement in claim 1 for:

"introducing the coated articles into a hot air environment."

Higgins I is directed to the preparation of fat-fried french fries having a prolonged serving time. The process includes coating oven dried potatoes with an emulsion, and then frying the potatoes in oil. As acknowledged by the Examiner, *Higgins I* does not teach the step of introducing the potato articles into a hot air environment for drying after the coating step.

In order to overcome the failure of *Higgins I* noted above, the Examiner has attempted to combine *Higgins I* with *Badertscher*. However, as noted above, when preparing french fries, *Badertscher* does not teach the step of drying the coated potato articles in a hot air environment. *Badertscher* only teaches this drying step in connection with the preparation of crisps in order to obtain the crunchy texture common to crisps that are ready to eat right out of the package. (*Badertscher*, col. 2, lns. 40-45.) Thus, combining the relevant teachings of

Higgins I with those of *Badertscher* would still not lead one to the step of drying emulsion-coated french fries in a hot air environment, as required by claim 1.

In addition, applicant notes that the present invention is specifically directed to the provision of french-fried potatoes having an acceptable taste and mouth feel, but having a lower fat content than conventional french-fried potatoes which are cooked in oil. (page 1, lns. 6-14.) The invention achieves this result by avoiding the deep frying of potatoes in oil. Simply adding a hot air heating step to the process of *Higgins I* would not eliminate the need to deep-fat fry the potatoes prior to serving. Thus, the combination of *Higgins I* with *Badertscher* teaches away from the methods of the present invention which avoid frying in oil so as to produce low fat potato articles. In that regard, in fashioning an obviousness rejection, the Examiner must consider a prior art reference in its entirety, including those portions that would lead away from the claimed invention. MPEP 2141.02 (VI), citing *W. L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), *cert. denied*, 469 US 851 (1984). The combination of *Higgins I* with *Badertscher* as contemplated by the Examiner would still result in a potato product intended to be fried, not the reduced fat product of applicants' invention. In view of the foregoing, applicants submit that claims 1-4 and 6 all patentably distinguish over the combination of *Higgins I* and *Badertscher*.

Bednar fails to overcome the deficiencies of *Higgins I* and *Badertscher* noted above. *Bednar* teaches the frying of potato articles both before and after application of a coating. (*Bednar*, col. 4, lns. 10-17.) Hence, for the reasons discussed above, applicants submit that one seeking to improve upon the process of *Higgins I* in order to produce a low-fat potato article would not look to the teachings of *Bednar*. For this

reason, applicants submit that claims 1-4 and 6 patentably distinguish over *Higgins I* in view of *Badertscher* and *Bednar* such as to warrant their immediate allowance, which action is respectfully requested.

Claims 5, and 7-17 have been rejected under 35 U.S.C. § 103(a) as obvious over *Higgins I* in view of *Badertscher* and *Bednar*, and further in view of U.S. Patent No. 5,279,840 to Baisier et al. ("*Baisier*") (claim 5); U.S. Patent No. 6,132,785 to Collinge et al. ("*Collinge*") (claims 7, 16 and 17); U.S. Patent No. 5,139,800 to Anderson et al. ("*Anderson*") (claims 8 and 9); U.S. Patent No. 5,753,286 to Higgins et al. ("*Higgins II*") (claim 10); *Higgins II* and *Anderson* (claim 11); and U.S. Patent No. 5,885,639 to Judkins ("*Judkins*") (claims 12-15).

Applicants initially reiterate the contentions set forth above with regard to the clear deficiencies of *Higgins I*, *Badertscher* and *Bednar*, and in particular, in their attempted combination. None of the secondary references cited by the Examiner overcomes these deficiencies. Accordingly, applicants submit that claims 5 and 7-17 patentably distinguish over *Higgins I* in view of *Badertscher* and *Bednar*, and further in view of each one of these secondary references such as to warrant their immediate allowance. In view of the foregoing, withdrawal of these rejections is respectfully requested.

As it is believed that all of the rejections set forth in the Official Action have been fully met, favorable reconsideration and allowance are earnestly solicited. If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that she telephone applicants' attorney at (908) 654-5000 in order to overcome any additional objections which she might have.

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If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

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Respectfully submitted,
Electronic signature:
/Robert B. Cohen/
Robert B. Cohen
Registration No.: 32,768
LERNER, DAVID, LITTENBERG,
KRUMHOLZ & MENTLIK, LLP
600 South Avenue West
Westfield, New Jersey 07090
(908) 654-5000
Attorney for Applicants

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